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HIGH COURT OF CHHATTISGARH : BILASPUR

Writ Petition No. 5466 of 2005

Petitioner : **M/s Mahavir Iron & Steel Industries Through its Prop. Shri Anjani Goenka, Ring Road No.2, Raipur (C.G.)**

Vs.

Respondents :

1. **State of Chhattisgarh Through its Secretary, Commercial Tax Department, Raipur**
2. **Additional Commissioner, Commercial Tax Department, Raipur**
3. **Assistant Commissioner Commercial Tax Department, Raipur**

Petitioner by Shri Ashish Shrivastava, Advocate.
Respondents by Shri N.K.Agrawal, Dy Advocate General.

ORDER
(Passed on 23/11/05)

The instant petition has been filed under Article 226/227 of the Constitution of India by the petitioner as he is aggrieved by the order dated 25.05.2005 passed by respondent No. 2 in revision against the order of assessment dated 28.11.1997 passed by respondent No.3 as the same has been partly allowed and a part relaxation in imposition of tax as well as penalty has been granted.

2. The case of the petitioner is that the petitioner-a Small Scale Industry, is engaged in processing iron and steel scrap materials and selling the same to the consumers. The petitioner is a registered dealer under the Chhattisgarh Commercial Tax Act, 1994 (in short 'the Act of 1994'). The petitioner was issued eligibility/exemption certificate on 04.09.2002 for a period from 11.05.1990 to 23.12.1994 by District Trade & Industries Centre, Raipur. The assessment of the petitioner's Industry was done by respondent No. 3 for the period 01.04.1994 to 31.03.1995 and accordingly a total tax of Rs.53,76,066/- along with penalty under Section 17(3) of the Act of 1994 was imposed vide order dated 28.11.1997.

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3. The petitioner preferred revision before respondent No.2 under Section 62 of the Act of 1994 on the ground that the assessment is bad, illegal and arbitrary as the Company has been granted certificate of eligibility for exemption from sales tax vide order dated 04.09.2002 under the Act of 1994 for period from 11.05.1990 to 23.12.1994. However, the revision preferred by the petitioner has been partly allowed after considering the eligibility certificate and extended the relaxation to the tune of Rs.42,46,885/- towards payment of sales tax and relaxation of Rs.10,61,870/- towards imposition of penalty. The impugned order of Annexure P/5 passed by the respondent No.2 is arbitrary and illegal as the same has been passed ignoring the law laid down by the Hon'ble Supreme Court in the matter of **Ashirwad Udyog and others Vs. State Level Committee and others** reported in **(1999) 32 VKN 65.**

4. On the other hand, learned counsel for the State/respondents submits that the petition is devoid of merits. He submits that taking into consideration the law laid down in the matter of Ashirwad Udyog and others (supra), certificate of eligibility for exemption of tax under M.P.General Sales Tax Act, 1958 and the General Sales Tax Act, 1956, was issued to the petitioner vide document of Annexure P/2 on 04.09.2002. The above exemption was available to the petitioner for a period commencing from 11.05.1990 and ending with 23rd day of December 1994. The revision preferred by the petitioner against the assessment for the assessment year commencing from 01.04.1994 to 31.03.1995 has been partly allowed and tax assessment done by the assessing authority for the period from 11.05.1990 to 23.12.1994 and imposition of penalty on the aforesaid amount, has been held contrary to law and accordingly relaxation of Rs. 42,46,885/- has been accorded towards sales tax and penalty of Rs. 10,61,870/- under Section 17(3) of the Act of 1994, has been reduced. Since the petitioner was not entitled for any exemption for the period commencing from 24.12.1994 to 31.03.1995, therefore, no relaxation was granted to the petitioner for the transaction between the above period.

5. I have heard learned counsel for the parties.

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6. From perusal of the order of respondent No.3-Assistant Commissioner, Commercial Tax of Annexure P/3 and impugned order of Annexure P/5 passed in revision by respondent No.2-Additional Commissioner, Commercial Tax, it appears that the assessment was done by not treating re-processing of iron industry as process of manufacture and thereby it was held that the petitioner's Industry was not eligible for exemption. However, eligibility certificate was issued to the petitioner in the light of the judgment of Hon'ble Apex Court in the matter of Ashirwad Udyog and others (supra) and in the light of the certificate of Annexure P/2, the revisional authority by the order of Annexure P/5 has extended relaxation and imposition of commercial tax under Section 17(3) of the Act of 1994. Thus in all a total relaxation of Rs. 42,46,885/- towards imposition of tax and Rs.10,61,870/- towards penalty has been accorded.

7. It is not disputed that the petitioner was not eligible for any exemption after 24.12.1994 since the assessment pertains to period from 01.04.1993 to 31.03.1995, therefore the petitioner was not eligible for any exemption for the period from 24.12.1994 to 31.03.1995. Thus, the contention of the petitioner that he was eligible for exemption as per judgment of the Hon'ble Apex Court which has not been accorded to him, is without any substance as the certificate of eligibility has been given to the petitioner as per the judgment of the Hon'ble Apex Court and as per eligibility certificate of Annexure P/2, relaxation and imposition of tax has already been extended to the petitioner.

8. As a result, the instant petition is dismissed.

Sd/-
Dhirendra Mishra
Judge